

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 431/2007

Mr. Rinoo Sehgal,
major of age, married, resident of Junas wada,
Mandrem, Pernem, Goa. Petitioner.

V/s.

1. The Goa Coastal Zone Management
Authority, having its Office at
Saligao, Bardez, Goa.

2. State of Goa, through its Chief Secretary,
New Secretariat, Porvorim, Bardez, Goa. Respondents.

Mr. V. A. Lawande, Advocate for the petitioner.

Mr. S. R. Rivonkar, Government Advocate for the respondents.

CORAM : R.S. MOHITE, J.

DATE : SEPTEMBER 07, 2007.

ORAL ORDER :

Heard both sides. This is a petition, impugning an order dated 27.7.2007, passed by the Goa Coastal Zone Management Authority ("GCZMA" for short) directing the petitioner to demolish a structure standing on survey No.267/35 situated in Village Mandrem within a period of one month from the date of the order and further stating that if it is not so

removed, then the GCZMA will issue directions to the appropriate authority to demolish the same, without any further notice. As per the said order, the structure, in question, is a restaurant of an area of 73.10 sq. metres and rooms admeasuring 38.40 sq. metres. It is mentioned in the order and not controverted in the petition that the offending structures are situated within 200 metres from the High Tide Line which as per the Notification dated 19.2.1991 is declared to be a “No Development Zone”.

2. The record indicates that a show cause notice was issued to the petitioner by the GCZMA first on 18.8.2004. This culminated into a final order of 10.12.2004 which came to be challenged in this Court on various grounds by filing a Writ Petition No. 419/2005. That writ petition came to be disposed off by Minutes of Order dated 23.8.06. The same provided that the order impugned in the said writ petition dated 10.12.2004 would be quashed and set aside and that the petitioner would, within two weeks from the date of the minutes of order, submit a request to the GCZMA for furnishing documents which were relied upon in the show cause notice dated 18.8.04 and which had not been earlier furnished to the petitioner. It was contemplated that the GCZMA would furnish to the petitioner the said documents within a period of one week from the request and the petitioner would be entitled to file an additional reply with additional documents, if any,

within a period of six weeks from the date Minutes of the Order. It was lastly contemplated that the GCZMA would dispose off the show cause notice within a period of four months after giving a personal hearing to the petitioner. The record indicates that, thereafter, the petitioner received the documents relied upon and filed an additional reply on 21.12.2006 along with documents indicating a sketch of the site and a repair permission in respect of a store room bearing No. 640, issued by the Village Panchayat of Mandrem. This repair permission was dated 30.10.1992. On the strength of such documentary evidence, it was contended that the structures were protected as they were prior to 1991. This reply dated 21.12.2006 is not annexed to the petition, and it has been tendered across the Bar for my perusal.

3. On the request of the Advocate for the petitioner, I am granting leave to amend to annex this reply to this petition. On a perusal of this reply, it appears that the case of the petitioner, on merits, is that there was a dilapidated store room in the said property bearing Survey No.267/35, which was, subsequently, repaired under repair permission which was obtained from the Village Panchayat of Mandrem. It is the petitioner's case that the property was purchased by him somewhere in the year 1992 from the erstwhile owner Mouriano Trinidad. That even prior to said Mouriano Trinidad, the

property, in question, belonged to one Moreshwar and Hirabai Parsekar. It was sought to be contended that though the Panchayat repair permission dated 30.10.1992 was after promulgation of the CRZ Notification dated 19.2.1991, the Authorities have also to consider the probative value of such document. Reliance was placed upon a Judgment of a Division Bench of this Court in the case *Vaijanath ZunjKar vs. The Scrutiny Committee for Verification of Tribe Claims and anr.*, reported in 2006 (3) AIR BOM R 743 (DB), wherein it was observed that the caste committee cannot reject the documents merely because they are of post-Presidential Order. Another Judgment cited in this regard by the Counsel for the petitioner is in the case of *State of Maharashtra & ors. vs. Ravi Prakash Babulalsing Parmar & anr.*, reported in 2007 ALL SCR 517, wherein it was observed that a document of the post-Presidential Order cannot be discarded only on the ground that it is of post-presidential period. I am unable to accept this submission of the petitioner. Firstly, the position of documents which are relevant for the purpose of deciding the caste claim is different from the position of documents relating to deciding the status of structures liable to be demolished. In the former case, a document which is issued after the Presidential Order cannot be treated to be irrelevant for deciding the caste and therefore probative value needs to be looked into by the caste scrutiny committee. In the latter case, a document such as a document for repair, issued after the CRZ Notification

comes into force, can have no probative value while deciding as to whether an earlier structure stood at the same spot prior to the issuance of the CRZ Notification. That apart, I find that the so called repair permission which is relied upon by the petitioner, has not been issued to any of the predecessors-in-title of the present petitioner. On a bare glance of the said repair permission, it is clear that it was issued in favour of one Manuel Fernandes. In the description of the property permitted to be repaired, the structure is described as store room bearing No.640 situated at Junaswada Mandrem. There is no mention of survey No.267/35. In my view, repair permission granted in the name of a person who is not the owner and which does not bear the survey number to indicate that it is situated on the same piece of land on which the present structure is located, not only has no probative value, but has no value at all. It has not been the case of the petitioner in the reply to the show cause notice that his predecessor-in-title had erected any structure on survey No.267/35 with the permission of the Village Panchayat. No such permission of the Village Panchayat in respect of the original structure was produced. It is not specifically his case in his reply that any structure was erected by his predecessor-in-title prior to the CRZ Notification dated 19.2.1991. It was sought to be contended that the person to whom the said repair permission was granted was the son-in-law of the predecessor-in-title. In my view, a mere fact that the person was a son in law, does not change the

situation as the statutory authority like the Village Panchayat can only issue such a permission in favour of the owner of the said property only.

4. If the said document dated 30.10.1992 is removed from consideration, then there is nothing produced by the petitioner to indicate that the structure which presently stands was erected prior to 19.2.1991. In fact, the petitioner's case being that the present structure was put up in pursuance of the repair permission dated 30.10.1992, itself indicates that the present structures were not erected prior to 19.2.1991. It may be mentioned here that he has purchased the property somewhere in the year 1992. For the reasons best known to him, the petitioner has not placed the sale deed on record during the inquiry conducted by the GCZMA. He has also not annexed the sale deed to the present petition. It was fairly conceded by the Advocate for the petitioner that the sale deed in favour of the petitioner does not indicate existence of any structure on survey No.267/35. It also does not indicate that the plot was purchased along with the structure.

5. On the merits of the case, I find that there is no foundation either in his reply or in the documentary evidence which the petitioner was allowed to produce to indicate that the present structure is constructed prior to the date of CRZ Notification dated 19.2.1991.

6. It was next contended that the rules of natural justice were violated as the matter was taken up for consideration by the respondent No.1 on 11.5.07 without any notice to the petitioner. This contention is not acceptable as the record indicates that the party was called for a personal hearing on 23.3.07 and he was present. Thereafter, the party was again called for personal hearing on 17.4.2007. On this date, the party was present along with his Advocate who prayed for time. The matter was then adjourned to 20.4.2007. On 20.4.2007, the petitioner appeared and filed an application dated 20.4.2007 seeking that he should be permitted to lead oral evidence of four witnesses whose names were Manual Fernandes, Babuso Hadfadkar, ex-Sarpanch, Ana Maria Sehgal and the predecessor-in-title of the property. It was contended that he ought to have been allowed to lead oral evidence in the matter. It was pointed out that the respondent No.1 erred in not allowing the oral evidence and rejecting his application for examining the witnesses on the ground that the respondent No.1 was not functioning as a Court, but as a quasi-judicial authority and the violation was decided only based on documentary evidence. Strong reliance was placed upon the observations of the Apex Court in the case of *State of Maharashtra & ors. vs. Ravi Prakash Babulalsing Parmar & anr. , (supra)* in paras 12 and 13 to the following effect :

“ 12. The Caste Scrutiny committee is a quasi-judicial body. It has been set up for a specific purpose. It serves a social and constitutional purpose. It is constituted to prevent fraud on Constitution. It may not be bound by the provisions of Indian Evidence Act, but it would not be correct for the superior courts to issue directions as to how it should appreciate evidence. Evidence to be adduced in a matter before a quasi-judicial body cannot be restricted to admission of documentary evidence only. It may of necessity have to take oral evidence.

13. Moreover the nature of evidence to be adduced would vary from case to case. The rights of a party to adduce evidence cannot be curtailed. It is one thing to say how a quasi-judicial body should appreciate evidence adduced before it in law but it is another thing to say that it must not allow adduction of oral evidence at all.

7. In my view, even assuming that the GCZMA which is a quasi-judicial authority has the power to permit leading of oral evidence, the leading of oral evidence cannot be claimed as a matter of right and it is not a mandatory requirement of the rules of natural justice. Before such evidence is permitted to be led, a quasi-judicial body is entitled to see if there is any foundation laid down. In the present case, in my view, there is no foundation laid down. It was never contended in the reply that there was a store room in the property prior to 19.2.1991. The repair licence dated 30.10.1992 has no relevance whatsoever as it is not issued in the name of the owner and does not refer to the survey number on which the present structure of the petitioner is situated. It also appears that the petitioner did not produce his

own sale deed in the inquiry before the GCZMA. He also could not produce any other document to show that there was any structure standing on survey No.267/35 prior to 19.2.1991. In my view, the matter was earlier remanded by this Court and, thereafter, sufficient opportunity has been given to the petitioner and it cannot be said that there is any violation of the rules of natural justice.

8. It was sought to be contended that the show cause notice and the order have been issued by the Member Secretary of the respondent No.1 who has no power to decide the matter. It is, however, seen that both, the show cause notice and the order indicate that the same have been passed for and on behalf of the respondent No.1. Obviously, the Member Secretary has only communicated the said order.

9. It was sought to be contended that the Notification dated 19.2.1991 and the Order dated 26.11.1998 constituting the Authority was ultra virus the Constitution for lack of legislative competence. My notice is drawn to the grounds 'Q' and 'R' in the petition which vaguely challenge the order dated 26.11.1998. There is no specific challenge to the Notification dated 19.2.1991. There is also no prayer for quashing this Notification made in this petition. I find that the direction, in question, has been issued under

Section 5 of the Environment (Protection) Act. There is no challenge to the provisions of the Environment (Protection) Act under which the CRZ Notification of 1991 was promulgated. In the absence of any prayer in the petition, challenging virus of the Environment (Protection) Act or even the notification, I find that merely because there is a vague challenge in the petition, this Court will not go into that aspect.

10. In the net result, I find that there is no substance in the petition. The same is rejected.

11. The petitioner states that he would like to approach the Apex Court and prays for stay of demolition of the structure for a period of five weeks. Stay as prayed, on an undertaking being filed by the petitioner in this Court within a period of one week from today to the effect that in case no relief is obtained from the Apex Court, within a period of five weeks, then he will not obstruct the demolition which may be carried out. Certified copy expedited.

R.S. MOHITE, J.

ssm.